a plurality of remote locations. The programming described in <u>Platt</u> operates to transmit auditory characteristics of each of the individual users to a central office. Then, at the central office, a calculating mechanism calculates an appropriate set of auditory parameters for each of the plurality of hearing aids based on the auditory characteristics of the respective individual users. Thereafter, the appropriate set of auditory parameters is transmitted from the central office to each of the plurality of remote locations for each of the hearing aids. Finally, a storing mechanism located at each of the plurality of remote locations operates to store the appropriate auditory parameters in the programmable memory of each of the plurality of hearing aids. Accordingly, the programming described in <u>Platt</u> is utilized to configure hearing aids for individual users.

In contrast, the claimed invention pertains to upgrading or updating existing hearing devices by downloading upgrade data (e.g., software resources) over a network from a remote server to a local client. More specifically, claim 1 recites, among other things, "reading device information from the hearing aid device" and "sending the device information to a hearing aid upgrade server via a network" (claim 1, lines 2-4). Since claim 1 pertains to upgrading a hearing aid device, there is an existing hearing aid device that is being upgraded. As such, device information from the hearing aid device is read and sent to the hearing upgrade server. This allows the hearing aid upgrade server to cause the hearing aid device to be properly upgraded. In any case, <u>Platt</u> is not concerned with upgrading a hearing aid device, but merely with configuring hearing aid devices for the hearing of particular users. Consequently, <u>Platt</u> has no teaching or suggestion for device information. As described in <u>Platt</u>, the only information utilized is "auditory characteristics" as clearly shown and described with respect to, for example, Fig. 2, block 42, and Fig. 5, block 202. Accordingly, <u>Platt</u> fails to teach or suggest "reading device information from the hearing aid device" and "sending the device information to a hearing aid upgrade server via a network."

Therefore, for at least the above noted reasons it is submitted that claim 1 is patentably distinct from <u>Platt</u>. In addition, it is submitted that dependent claims 2-4 are also patentably distinct from <u>Platt</u> for at least the same reasons. The additional limitations recited in independent claim 1 or the dependent claims 2-4 are not further discussed as the above-discussed limitations are clearly sufficient to distinguish the claimed invention from <u>Platt</u>. Thus, it is respectfully requested that the Examiner withdraw the rejection of claims 1-4 under 35 USC § 102(b).

REJECTION OF CLAIMS 5-33 UNDER 35 USC § 103(a)

In the Office Action, the Examiner rejected claims 5-10, 14-17, 21-23 and 29-32 under 35 USC § 103(a) as being unpatentable over Platt in view of Trovato et al., U.S. Patent No. 6,469,742; rejected claims 11-13, 18, 27, 28 and 33 under 35 USC § 103(a) as being unpatentable over Platt in view of Trovato et al. and further in view of Weidner, U.S. Patent No. 6,556,686; and rejected claims 19-20 and 24-26 under 35 USC § 103(a) as being unpatentable over Platt in view of Trovato et al. and further in view of Putvinski, International Publication No. WO/17819. These rejections are fully traversed below.

In rejecting claims 10, 22 and 32, on page 4 of the Office Action, the Examiner relies on a combination of Platt and Trovato et al. The Examiner appears to assert that Platt makes use of device information in the manner recited in claims 10, 22 and 32. However, as noted above with respect to claim 1, Platt is clearly deficient on making any use of device information as recited in any of claims 10, 22 and 32. The Examiner appears to rely on Trovato et al. to teach that device upgrades may include upgraded software. While Trovato et al. does pertain to consumer electronic devices that are able to be upgraded with modules for providing operating functions. However, nothing in Trovato et al. pertains to a hearing aid and thus nothing in Trovato et al. teaches or suggests reading device information from a hearing aid device or requesting upgraded software for the hearing aid device from a remote hearing aid upgrade server based on the device information as is recited in claim 10. Claims 22 and 32 recite similar limitations. Hence, Trovato et al. is not able to overcome the above-noted deficiencies of Platt. Furthermore, Trovato et al. pertains to consumer electronic devices, such as a television, whereas Platt pertains to programming a hearing aid device at a hearing health professional's office. Hence, there is no motivation or suggestion of record that would lead one of ordinary skill in the art to combine Trovato et al. with Platt in the manner urged by the Examiner.

Claims 29-31 pertain to a computer readable medium that include at least computer program code for upgrading a hearing aid device. Each of these claims make use of device information associated with the hearing aid device in order to upgrade the hearing aid device. Accordingly, for reasons similar to those noted above, it is submitted that claims 29-31 are also patentably distinct from Platt, alone or in combination with Trovato et al.

The other secondary references of Weidner and Putvinski are also not able to overcome the deficiencies of Platt and Trovato et al.

Based on the foregoing, it is submitted that claims 10, 22 and 29-32 are patentably distinct from Platt and any one or more of Trovato et al., Weidner or Putvinski. In addition, it is submitted that dependent claims 5-9, 11-21, 23-28 and 33 are also patentably distinct for at least

the same reasons as their corresponding independent claim. The additional limitations recited in the independent claims or the dependent claims are not further discussed as the above-discussed limitations are clearly sufficient to distinguish the claimed invention from any one or more of Platt, Trovato et al., Weidner and Putvinski. Thus, it is respectfully requested that the Examiner withdraw the rejection of claims 5-33 under 35 USC § 103(a).

SUMMARY

It is submitted that claims 1-33 are patentably distinct from the cited references. Reconsideration of the application and an early notice of allowance are earnestly solicited.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-0388 (Order No. AUD1P009).

Respectfully submitted,
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